

TTAB

CERTIFICATE OF MAILING

I hereby certify that this correspondence is addressed to: TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, and is being deposited with the United States Postal Service with sufficient postage as first class mail on August 13, 2003.

Elin M. Eubank

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE VERMONT TEDDY BEAR
COMPANY, INC.,

Opposer,

v.

BUILD-A-BEAR WORKSHOP, INC.,

Applicant.

Opposition No. 115,198



08-15-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

ANSWER

COMES NOW Applicant, Build-A-Bear Workshop, Inc. ("BABW"), and for its answer to the Notice of Opposition filed by The Vermont Teddy Bear Company, Inc. ("VTB") states as follows:

1. BABW is without information or knowledge sufficient to form a belief as to the allegations set forth in paragraph 1, and therefore denies same.
2. BABW is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 2, and therefore denies same.
3. BABW is without information or knowledge sufficient to form a belief as to the allegations set forth in paragraph 3, and therefore denies same. BABW denies that VTB has made trademark use of a heart in interstate commerce prior to BABW.

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4. BABW is without information or knowledge sufficient to form a belief as to the allegations set forth in paragraph 4, and therefore denies same. BABW denies that VTB has made trademark use of a heart in interstate commerce prior to BABW.

5. BABW is without information or knowledge sufficient to form a belief as to the allegations set forth in paragraph 5, and therefore denies same. BABW denies that VTB has made trademark use of a heart in interstate commerce prior to BABW.

6. BABW denies the allegations contained in paragraph 6.

7. BABW denies the allegations contained in paragraph 7.

8. BABW admits that Opposer has filed a Trademark Application No. 75-774,077. BABW states that this Application speaks for itself, does not comport with the description given in paragraph 8, and therefore denies VTB's characterization of its Application in paragraph 8.

9. BABW admits that on February 13, 1998 BABW filed Trade Mark Application 75-434,462. BABW states this Application speaks for itself, and therefore denies VTB's characterization of it.

10. BABW admits that Application No. 75-434,462 is a combined Trade Mark and Service Mark application for plush animals and stuffed toys in International Class 28, and retail store services featuring plush toy animals, stuffed toy animals and accessories in International Class 35. Applicant further states that Applicant's Application speaks for itself. Applicant denies all remaining allegations in paragraph 10 not specifically admitted herein.

11. BABW admits the allegations contained in paragraph 11.

12. BABW admits that it did not file an amendment to allege use before the Notice of Publication was mailed.

13. BABW denies that Opposer is the first user of the trademark and service marks that are the subject of BABW's Application No. 75-434,462. BABW denies VTB's characterization of Application No. 75-434,462, as it is a publicly filed document which speaks for itself, including the declaration therein.

14. BABW denies the allegations contained in paragraph 14.

15. Applicant is without knowledge or information sufficient to form a belief as to the meaning of "Opposer's mark" and hence denies the allegations contained in paragraph 15.

16. BABW denies the allegations set forth in paragraph 16.

17. BABW denies the allegations set forth in paragraph 17.

FURTHER ANSWER AND AFFIRMATIVE DEFENSES

1. Opposer fails to state a claim upon which relief can be granted.

2. Applicant's use and registration of the mark at issue in this Opposition, as specified in Trade Mark Application 75-434,462 ("the Mark"), will not result in any confusion or likelihood of confusion to the detriment of Opposer, as Applicant has superior rights in and to the Mark.

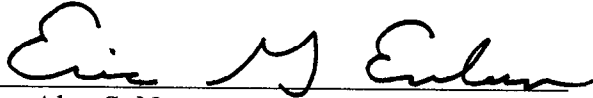
3. Opposer will not be damaged by Applicant's use or registration of the Mark as specified in Applicant's Application.

4. Opposer's opposition to Applicant's use and registration of the mark is barred by the doctrines of waiver, estoppel, acquiescence, ratification, laches and abandonment.

5. Opposer is not entitled to registration of the trademark and service mark alleged in paragraph 8 of the Notice of Opposition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Stipulation for Additional Extension to File Answer was served upon H. Jay Spiegel & Associates, P.O. Box 444, Mount Vernon, Virginia 22121 by first class mail on the 13TH day of August, 2003.

